

## BRIG ORION.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS  
 TRANSMITTING A COPY OF THE CONCLUSIONS OF LAW AND OF  
 FACT IN THE FRENCH SPOILIATION CASES RELATING TO THE  
 VESSEL BRIG ORION, FREDERICK HOPKINS, MASTER.

FEBRUARY 19, 1904.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS,  
*Washington, D. C., February 18, 1904.*

SIR: Pursuant to the order of the Court of Claims, I transmit herewith the conclusions of fact and of law filed under the act of January 20, 1885, in the French spoliation claims set out in the annexed findings by the court relating to the vessel brig *Orion*, Frederick Hopkins, master.

I am, very respectfully, yours, etc.,

JOHN RANDOLPH,  
*Assistant Clerk Court of Claims.*

Hon. JOSEPH G. CANNON,  
*Speaker House of Representatives.*

[Court of Claims. French spoliations. Act of January 20, 1885; 23 Stat. L., 283. Vessel brig *Orion*, Frederick Hopkins, master.]

No. of  
 case.

Claimant.

- 1284. The president and directors of the Insurance Company of North America *v.* The United States.
- 420. Charles F. Adams, administrator of Peter C. Brooks, *v.* The United States.  
 A. Lawrence Lowell, administrator of Nathaniel Fellowes, *v.* The United States.  
 Thomas N. Perkins, administrator of John C. Jones, *v.* The United States.  
 Chandler Robbins, administrator of Joseph Russell, *v.* The United States.  
 Francis M. Boutwell, administrator of Benjamin Cobb, *v.* The United States.
- 1936. Seth P. Snow, administrator of Crowell Hatch, *v.* The United States.
- 4947. John C. Hollister, administrator of Samuel Hull, *v.* The United States.  
 John C. Hollister, administrator of Abijah Hull, *v.* The United States.  
 John C. Hollister, administrator of William Mansfield, *v.* The United States.  
 John C. Hollister, administrator of Liberty Kimberly, *v.* The United States.  
 Maria L. Seymour, administratrix of Sheldon Curtis, *v.* The United States.  
 John F. Plumb, administrator of John Humphreys, *v.* The United States.  
 John F. Plumb, administrator of James Humphreys, *v.* The United States.

### PRELIMINARY STATEMENT.

These cases were tried before the Court of Claims on the 29th day of April, 1902. The claimants were represented by John W. Butterfield, William T. S. Curtis, Theodore J. Pickett, and George S. Boutwell, esqs., and the United States, defendants,

by the Attorney-General, through his assistants in the Department of Justice, Charles W. Russell and John W. Trainer, esqs., with whom was associated Assistant Attorney-General Louis A. Pradt.

#### CONCLUSIONS OF FACT.

The court, upon the evidence and after hearing the arguments and considering same with the briefs of counsel on each side, determine the facts to be as follows:

I. The brig *Orion*, Frederick Hopkins, master, sailed on a commercial voyage on the 5th day of January, 1800, from New Haven, bound to Martinico. While peacefully pursuing said voyage the *Orion* was seized on the high seas on or about the 25th day of February, 1800, by the French privateer *La Resolue*, Captain Roux, and conducted to the island of Guadeloupe, and thereafter both vessel and cargo were condemned and ordered sold for the benefit of the captors by decree of the tribunal of commerce and prizes, sitting at Basseterre, in said island, and thereby became a total loss to the owners thereof.

The grounds of condemnation, as stated in the decree, were as follows, viz:

First. Considering that from the said analyzed papers, and from those of instructions above mentioned, it appears that the cargo of the said brigantine is not sufficiently proved neutral, for there is no invoice among the said papers, but only a bill of lading, which does not specify to whom the merchandise of said cargo belongs.

Second. Considering that the act of affirmation which is at the end of the sea letter of the said brigantine is not in good form.

Third. Considering that the master of said brigantine has no rôle d'équipage, but only his agreement with the men composing his crew.

II. The *Orion* was a duly registered vessel of the United States, of 133 $\frac{7}{8}$  tons burden, built in Connecticut in the year 1799. She was owned solely by William Mansfield, Samuel Hull, Abijah Hull, Liberty Kimberly, Sheldon Curtis, James Humphreys, and John Humphreys, citizens of the United States, residing in Derby, Conn., in the proportion of one-seventh each.

III. The cargo of the *Orion* consisted of lumber, oxen, sheep, and swine, pork, corn meal, poultry, and one horse owned by Samuel Hull, Abijah Hull, William Mansfield, John Humphreys, Liberty Kimberly, and Sheldon Curtis, in the proportion of one-sixth each.

The master and mate of said vessel had an adventure on board, and were likewise entitled to certain commissions.

Nearly all of the live stock was lost overboard prior to the capture of said vessel.

IV. The losses by reason of the capture and condemnation of the *Orion* were as follows:

The value of the vessel .....	\$5,992.00
The freight earnings .....	2,219.65
Value of cargo at time of capture .....	3,414.00
Premiums of insurance paid on actual value of vessel and cargo at time of capture .....	1,735.59
Master and mate's adventure and commissions .....	520.00
Premium of insurance paid by same .....	70.50
Amounting in all to .....	13,951.74

#### V. The losses of William Mansfield were as follows:

One-seventh value of vessel .....	\$856.00
One-sixth value of cargo .....	569.00
One-seventh of freight earnings .....	317.09
One-fourth premium paid Brooks's office on actual value at time of capture .....	299.56
One-sixth premium paid Insurance Company of North America on actual value at time of capture .....	20.36
Amounting in all to .....	2,062.01

It appears that said Mansfield was afterwards paid by said Peter C. Brooks and the Insurance Company of North America the sum of \$2,213.33, which more than covered his losses.

#### VI. The losses of Samuel Hull and Abijah Hull were as follows:

Two-sevenths value of the vessel .....	\$1,712.00
One-third value of cargo .....	1,138.00
Two-sevenths freight earnings .....	634.18

Proportion of premium paid Brooks's office on actual value at time of capture.....	\$599.12
Proportion of premium paid Insurance Company of North America on actual value at time of capture.....	40.72
Amounting in all to .....	4,124.02

It appears that said Samuel and Abijah Hull were afterwards paid by the said Peter C. Brooks and the Insurance Company of North America the sum of \$4,426.66, which more than covered their losses.

VII. The losses of Liberty Kimberly were as follows:

One-seventh value of vessel.....	\$856.00
One-sixth value of cargo .....	569.00
One-seventh freight earnings .....	317.09
Premium paid Brooks's office on actual value at time of capture.....	215.02
Premium paid Insurance Company of North America on actual value at time of capture.....	20.36
Amounting in all to.....	1,977.47
Less insurance received.....	1,488.34
Leaving net loss of Liberty Kimberly.....	489.13

VIII. The losses of Sheldon Curtis were as follows:

One-seventh value of vessel.....	\$856.00
One-sixth value of cargo .....	569.00
One-seventh freight earnings .....	317.10
Premium paid Brooks's office on actual value at time of capture.....	20.36
Amounting in all to.....	1,962.62
Less insurance received .....	1,533.33
Leaving net loss of Sheldon Curtis.....	429.29

The losses of John Humphreys were as follows:

One-seventh value of vessel .....	\$856.00
One-sixth value of cargo .....	569.00
One-seventh freight earnings.....	317.10
Premium paid Brooks's office on actual value at time of capture .....	299.56
Premium paid Insurance Company of North America on actual value at time of capture.....	20.36
Amounting in all to .....	2,062.02

IX. It appears that said John Humphreys was afterwards paid by the said Peter C. Brooks and the Insurance Company of North America the sum of \$2,213.34, which more than covered his losses.

The losses of James Humphreys were as follows:

One-seventh value of vessel .....	\$856.00
One-seventh freight earnings.....	317.10
Amounting in all to .....	1,173.10

X. March 21, 1800, said Samuel and Abijah Hull, William Mansfield, Sheldon Curtis, John Humphreys, and Liberty Kimberly effected insurance in the office of the Insurance Company of North America in the sum of \$1,000, paying therefor a premium of  $12\frac{1}{2}$  per cent.

June 23, 1800, said company duly paid the said assured the sum of \$980 as and for a total loss by reason of the premises, being the face of said policy less the customary abatement of 2 per cent.

XI. January 1, 1800, said Liberty Kimberly effected insurance in the office of Peter C. Brooks in the sum of \$1,325, paying therefor a premium of 18 per cent on \$750, 10 per cent on \$325, and 15 per cent on \$350, by a policy underwritten in said sum by Samuel W. Pomeroy, a citizen of the United States.

May 30, 1800, said Brooks, as agent, duly paid the said assured the amount of said policy as and for a total loss by reason of the premises, the same being a loss to the said Pomeroy in the said sum.

XII. January 21, 1800, Frederick Hopkins, master of said vessel, and Samuel Harris, mate, effected insurance in the office of Peter C. Brooks on their adventure

valued at \$220 and on commissions valued at \$300 in the sum of \$520, paying therefor a premium of 15 per cent on \$370 and 10 per cent on \$150, by a policy underwritten by Tuthill Hubbard, a citizen of the United States, in said sum.

May 30, 1800, said Brooks, as agent, duly paid to said assured the amount of said policy as and for a total loss by reason of the premises, the same being a loss to said Hubbard in said sum.

XIII. January 1, 1800, said Sheldon Curtis effected insurance in the office of Peter C. Brooks in the sum of \$1,370, paying therefor a premium of 18 per cent on \$535, 10 per cent on \$335, and 15 per cent on \$500, by a policy underwritten by the following persons, citizens of the United States, each in the sum set opposite his name, viz:

William Smith .....	\$870.00
Stephen Gorham .....	500.00

May 30, 1800, said Brooks, as agent, duly paid the said assured the amount of said policy as and for a total loss by reason of the premises, the same being a loss to each of said underwriters of the sum subscribed by him.

XIV. January 1, 1800, said Hulls, William Mansfield, and John Humphreys effected insurance in the office of Peter C. Brooks in the sum of \$8,200, paying therefor a premium of 18 per cent on \$3,200, 10 per cent on \$2,000, and 15 per cent on \$3,000, by a policy underwritten by the following persons, citizens of the United States, each in the sum set opposite his name, viz:

David Greene .....	\$1,000.00
Benjamin Homer .....	500.00
Nathaniel Fellowes .....	1,000.00
John C. Jones .....	1,000.00
Jeffrey & Russell .....	1,000.00
Benjamin Bussey .....	1,000.00
Cornelius Durant .....	1,000.00
Benjamin Cobb .....	500.00
Crowell Hatch .....	600.00
Daniel D. Rogers .....	600.00

May 30, 1800, said Brooks, as agent, duly paid the said assured the amount of said policy as and for a total loss by reason of the premises, the same being a loss to each of the said underwriters in the sum subscribed by him.

XV. The firm of Jeffrey & Russell was composed of Patrick Jeffrey and Joseph Russell, the last named being the survivor of the firm.

December 23, 1801, David Greene, in consideration of \$6,000, to him paid by Peter C. Brooks, and the assumption by the said Brooks of all and any liabilities and disadvantages arising from his underwriting in the office of the said Brooks, assigned to the said Brooks all his right, title, and interest in and to all insurance done by him as an underwriter in the office of the said Brooks.

July 23, 1805, Benjamin Homer, in consideration of \$5,000, to him paid by Peter C. Brooks, and the assumption by the said Brooks of all and any liabilities and disadvantages arising from his underwriting in the office of the said Brooks, assigned to the said Brooks all his right, title, and interest in and to all insurance done by him as an underwriter in the office of the said Brooks.

February 15, 1805, Benjamin Bussey, in consideration of \$10,000, to him paid by Peter C. Brooks, and the assumption by the said Brooks of all and any liabilities and disadvantages arising from his underwriting in the office of the said Brooks, assigned to the said Brooks all his right, title, and interest in and to all insurance done by him as an underwriter in the office of the said Brooks.

October 19, 1804, Daniel D. Rogers, in consideration of \$3,400, to him paid by Peter C. Brooks, and the assumption by the said Brooks of all and any liabilities and disadvantages arising from his underwriting in the office of the said Brooks, assigned to the said Brooks all his right, title, and interest in and to all insurance done by him as an underwriter in the office of the said Brooks.

January 7, 1804, Cornelius Durant, in consideration of \$181.77, to him paid by Peter C. Brooks, and the assumption by the said Brooks of all and any liabilities and disadvantages arising from his underwriting in the office of the said Brooks, assigned to the said Brooks all his right, title, and interest in and to all insurance done by him as an underwriter in the office of the said Brooks.

April 4, 1808, Tuthill Hubbard, in consideration of \$60,000, to him paid by Peter C. Brooks, and the assumption by the said Brooks of all and any liabilities and disadvantages arising from his underwriting in the office of the said Brooks, assigned to the said Brooks all his right, title, and interest in and to all insurance done by him as an underwriter in the office of the said Brooks.

December 16, 1801, William Smith, in consideration of \$3,715.50, to him paid by Peter C. Brooks, and the assumption by the said Brooks of all and any liabilities and disadvantages arising from his underwriting in the office of the said Brooks, assigned to the said Brooks all his right, title, and interest in and to all insurance done by him as an underwriter in the office of the said Brooks.

November 21, 1801, Stephen Gorham, in consideration of \$2,986.65, to him paid by Peter C. Brooks, and the assumption by the said Brooks of all and any liabilities and disadvantages arising from his underwriting in the office of the said Brooks, assigned to the said Brooks all his right, title, and interest in and to all insurance done by him as an underwriter in the office of the said Brooks.

February 7, 1804, Samuel W. Pomeroy, in consideration of \$4,900, to him paid by Peter C. Brooks, and the assumption by the said Brooks of all and any liabilities and disadvantages arising from his underwriting in the office of the said Brooks, assigned to the said Brooks all his right, title, and interest in and to all insurance done by him as an underwriter in the office of the said Brooks.

XVI. The claimants herein have produced letters of administration upon the estates of the parties for whom they appear, and have otherwise proved to the satisfaction of the court that the persons for whose estates they have filed claims are in fact the same persons who suffered loss by the seizure and condemnation of the *Orion*, as set forth in the preceding findings.

Said claims were not embraced in the convention between the United States and the Republic of France concluded on the 30th of April, 1803. They were not claims growing out of the acts of France allowed and paid in whole or in part under the provisions of the treaty between the United States and Spain, concluded on the 22d of February, 1819, and were not allowed in whole or in part under the provisions of the treaty between the United States and France of the 4th of July, 1831.

The claimants, in their representative capacity, are the owners of said claims which have never been assigned except as aforesaid.

## CONCLUSIONS OF LAW.

The court decides as conclusions of law that said seizure and condemnation were illegal, and the owners and insurers had valid claims of indemnity therefor upon the French Government prior to the ratification of the convention between the United States and the French Republic, concluded on the 30th day of September, 1800; that said claims were relinquished to France by the Government of the United States by said treaty in part consideration of the relinquishment of certain national claims of France against the United States; and that the claimants are entitled to the following sums from the United States:

1284. The president and directors of the Insurance Company of North America, nine hundred and thirty-seven dollars and seventy-two cents.	\$937. 72
420. Charles F. Adams, administrator of Peter C. Brooks, six thousand nine hundred and ninety-nine dollars and thirty-nine cents .....	6, 999. 39
420. A. Lawrence Lowell, administrator of Nathaniel Fellows, nine hundred and fifty-six dollars and eighty-six cents .....	956. 86
420. Thomas N. Perkins, administrator of John C. Jones, nine hundred and fifty-six dollars and eighty-six cents .....	956. 86
420. Chandler Robbins, administrator of Joseph Russell, survivor of the firm of Jeffry and Russell, nine hundred and fifty-six dollars and eighty-six cents .....	956. 86
420. Francis M. Boutwell, administrator of Benjamin Cobb, four hundred and seventy-eight dollars and forty-two cents .....	478. 42
1936. Seth P. Snow, administrator of Crowell Hatch, five hundred and seventy-four dollars and eleven cents .....	574. 11
4947. John C. Hollister, administrator of Liberty Kimberly, four hundred and eighty-nine dollars and thirteen cents .....	489. 13
4947. Maria L. Seymour, administratrix of Sheldon Curtis, four hundred and twenty-nine dollars and twenty-nine cents .....	429. 29
4947. John F. Plumb, administrator of James Humphreys, one thousand one hundred and seventy-three dollars and ten cents .....	1, 173. 10

BY THE COURT.

Filed May 19, 1902.

A true copy.

Test this 18th day of February, 1904.

[SEAL.]

JOHN RANDOLPH,  
Assistant Clerk Court of Claims.

